IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2356 OF 2005

1. Jawed Urdu Primary School)
Azad Nagar, Ghatkopar (West),)
Mumbai-400 086)

2. Ayesha Educational & Welfare Trust)
Azad Nagar, Ghatkopar (West),)
Mumbai-400 086, through Jawed Alam,)
Secretary of Petitioner No.2.)…Petitioners

Versus

1. The Collector of Mumbai,)
Mumbai Suburban District,)
Administrative Building,)
Bandra (West), Mumbai-400 051)

2. State of Maharashtra (through the Chief)
Secretary, Government of Maharashtra,)
Mantralaya, Mumbai-400 032).)

3. Brihanmumbai Municipal Corporation,)
having their office at Mahapalika Marg,)
Fort, Mumbai-400 001)

4. Nasheman Educational & Welfare Society)
A-15/2, Parksite Colony, Vikhroli (West))
Mumbai-400 086)..Respondents

Mr. Manish Mistry, instructed by Mr. M.P. Vashi, for the Petitioners
Mr. Pradeep Jadhav, Assistant Government Pleader, for respondent Nos. 1 and 2.
Ms. Shobha Ajitkumar for respondent No. 3.

CORAM: DALVEER BHANDARI, C.J., &
S.J. VAZIFDAR, J.

DATE: SEPTEMEBR 29, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):

1. The second respondent, Ayesha Educational & Welfare Trust, is a Trust registered under the Bombay Public Trusts Act, 1950. The said Trust owns and manages the first petitioner Urdu medium Primary School. In this petition, the petitioners are aggrieved by the order dated 1st June, 2005, passed by the Chief Minister, in-charge of the Revenue Ministry. The petitioners have prayed that the said order be quashed and set aside.

2. The petitioners have further prayed that the respondents, namely, the State of Maharashtra and Brihanmumbai Municipal Corporation, be directed to allot the plot bearing CTS No. 174, Kirol and CTS No. 351, Asalpha, Ghatkopar, Mumbai, to the petitioners for running a primary school.

3. In the impugned order it is incorporated that vide notification dated 3rd October, 2003, sanction has been accorded for a plot of land admeasuring 711.7 sq.mtrs. out of CTS No. 351 (Pt.) situate at village Asalpha, which is reserved for the Primary School, Playground and

Dispensary in the approved Development Plan of the Brihanmumbai Municipal Corporation to respondent No.4, namely, Nasheman Educational & Welfare Society.

4. The petitioners aggrieved by the said order filed a petition being Writ Petition No. 645 of 2004 in this Court. The Court, after hearing the parties, while quashing the impugned order, directed the Minister for Revenue to consider the claims of the petitioners on the one hand and of respondent No.4 on the other hand and decide the same by a reasoned order.

5. Pursuant to the direction of the Court, the impugned order was passed by the Chief Minister, in-charge of Revenue Ministry, on 1st June, 2005. The operative portion of the order reads as under:

> "Out of the CTS No. 351 (Part), the land adm. 711.7 sq.mtrs. of land as shown in the sanctioned Development Plan of the BMC **to be reserved for the Primary School, Playground and Dispensary** is allotted to Nasheman Education & Welfare Society for **the purpose of a Primary School** in accordance with the provisions of the Maharashtra Land Revenue Government Land Allotment Rules, 1971 and under Rules 5 and 6 and Government Circular in the Revenue & Forest Department No. LFR 1083/1496/3700/G-

6 Dt. 11-5-1984 as also as per the terms and conditions stipulated in Government Circular No. LRF 1083/71134/Pra.Kra.3478/G-6 Dt. 8-2-1983. On receiving the price of the land possession rights would be given. The said Nasheman Education & Welfare Society will obtain approval from the competent authority for the primary school within 3 years from the date of sanction order of the allotment of land, failing which the order sanctioning the land for the said purpose will become null and void."

6. The second petitioner applied to the Collector, respondent No.1, for allotment of plot for school building vide its application dated 25th July, 2001. According to that application, petitioner No.1 Trust is running a High School in the building. It is mentioned in the letter that the Trust does not have sufficient land to erect the school building. Present accommodation is very inconvenient to accommodate existing students and to meet growing need for the High School and consequently the site in question be allowed to petitioner No.2. Obviously the petitioners did not apply for allotment of land for the Primary School.

7. The petitioners are now submitting that they have applied for allotment of a plot of land reserved for primary school. This is factually

incorrect and is not borne out of the averment of their application for allotment of the land. In the opening part of the impugned order, it is clearly mentioned that the land is reserved for the Primary School, Playground and Dispensary in the approved Development Plan of the Brihanmumbai Municipal Corporation and in the operative portion of the impugned order, which has been set out in the preceding paragraph, it is clearly mentioned that the land was allotted to Nasheman Education and Welfare Society for the purpose of establishing a Primary School.

8. Pursuant to the show cause notice issued by this Court, reply affidavit has been filed by the Under Secretary, Revenue and Forest Department, Mantralaya, Mumbai, on 2nd September, 2005. It is mentioned that by virtue of the Memorandum dated 3rd October, 2003, a plot of land bearing City Survey No. 351 (Pt.), admeasuring 711.7 sq.mts. situated at Kirol, Asalpha Village, Ghatkopar (West), Mumbai, was allotted to respondent No.4 i.e. Nasheman Educational and Welfare Society, a registered society being No. 603/1989 under Public Trust Act Registered No. F-13850 for the purpose of construction for starting the **Primary School as per reservations in the Development Plan**. The said application was received from respondent No.4 vide their letter dated 11th June, 2001 which stated that respondent No.4 is a

society carrying out various educational activities since 1989 in Vikhroli, Ghatkopar areas and may be granted 1194 sq.mts. of land bearing CTS No. 351 at Asalpha Village and CTS No. 174 at Kirol for running an educational institution.

9. It is also mentioned in the reply that the school which is run by Petitioner No. 1 is a recognized Secondary School and the petitioners had applied for allotment of land for the said School whereas respondent No.4 has made representation for allotment of a plot only for establishing a Primary School for which the said plot was specifically reserved.

10. It is further mentioned in the affidavit that for consideration of allotment of the said plot to 4 Societies/Trust viz. (i) Nasheman Educational & Welfare Society (Respondent No.4), (ii) Ayesha Educational & Welfare Trust (the petitioner), (iii) Sahara Educational and Cultural Society and (iv) Stri Pariwartan Educational Society, reports were called from various authorities such as Collector, School Education Department, Urban Development Department, Finance Department and Chief Engineer, BMC and these reports were taken into consideration.

It is also mentioned that though the reports are not conclusive for ultimate suggestion, a self-contained proposal in this connection containing the remarks/recommendations of the concerned departments was submitted for consideration of the Government. The said proposal was considered by the Government and the plot was allotted to respondent No.4 under Section 40 of the Maharashtra Land Revenue Code, 1966, wherein the Government had been vested with powers to dispose of any land, property of Government on such terms and conditions as it deems fit and accordingly under the Government Memorandum No. LRA-2601/250/C.R.618/J-3 dated 3rd October, 2003, the said plot of land was allotted to respondent No.4 with certain terms and conditions as per Rules 5 and 6 of Disposal of Government Land Rules, 1971.

11. It is incorporated in the affidavit that the said allotment was challenged by the petitioners in Writ Petition NO. 645 of 2004. Pursuant to the Court's direction, the Chief Minister again considered all the issues and passed the impugned order allotting the said plot to respondent No.4 in accordance with the provisions of the Maharashtra Land Revenue Code, Land Allotment Rules, 1971, under Rules 5 and 6

of Government Circular of Revenue & Forest Department No. LRF 1083/1496/3700/G-6 dated 11th May, 1994 and also as per the terms and conditions stipulated in Government Circular No. LRF-1083/71134/Pra.Kra.3478/G-6 dated 8th February, 1983.

12. We have heard the learned counsel for the petitioners and the respondents. It is abundantly clear from the pleadings and documents on record that the said plot was reserved specifically for establishing a Primary School. The application of the petitioners was not for establishing a Primary School whereas the application of respondent No.4 was specifically made for allotment of land for establishing a Primary School.

13. The land in question was allotted to respondent No.4 for establishing a Primary School, after considering the relevant documents, report and information on record. In our view, the petitioners certainly were not entitled for allotment of the said land because the land in question was specifically reserved for the Primary School/Playground and Dispensary in the Draft Development Plan of the Brihanmumbai Municipal Corporation and it could not be allotted to

the petitioners whereas respondent No.4 applied for establishing a Primary School. *Prima facie,* we see no infirmity, illegality or irregularity in the allotment of the land to respondent No.4.

14. This petition is totally devoid of any merit and it is accordingly dismissed. In the facts and circumstances, we direct the parties to bear their own costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.